U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: San Francisco Date: FEB 04 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

IN BEHALF OF APPLICANT:

[redacted]

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert Wiemann
for Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico who initially was admitted to the United States as a nonimmigrant visitor in 1989 and remained to reside with her mother and two brothers. After several admissions to the United States as a nonimmigrant visitor, she was detained for hearing on October 14, 1993 after it was determined that she may be an immigrant not in possession of a valid immigrant visa and labor certification. On January 6, 1995, she was found to be inadmissible to the United States by an immigration judge under former §§ 212(a)(5) and (7), 8 U.S.C. 1182(a)(5) and (7), for not being in possession of a labor certification and for not being in possession of a valid immigrant visa or lieu document. The applicant was excluded and deported from the United States on January 10, 1995.

The applicant returned to the United States in January 1995 without having remained outside the United States for one year and without having obtained permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant indicates in a signed affidavit under oath that the immigration officer just asked if she was a U.S. citizen and she just said yes and walked through. The district director concluded that the applicant was inadmissible to the United States under § 212(a)(6)(C)(ii) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(ii), for having made a false claim to U.S. citizenship. The applicant is the unmarried daughter of a naturalized U.S. citizen and is the beneficiary of an approved preference visa petition. The applicant seeks the above waiver in order to remain in the United States and reside with her family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

The Act was amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Aliens who falsely claim to be U.S. citizens for any purpose or benefit under the Act or other federal or state law are inadmissible. This provision took effect on September 30, 1996 and applies to misrepresentations occurring on or after that date. There is no waiver for the ground of inadmissibility under § 212(a)(6)(C)(ii) of the Act. Since the applicant's false claim was committed in 1995, she is inadmissible under § 212(a)(6)(C)(i) of the Act and a waiver of that ground of inadmissibility is available.

On appeal, counsel states that the young applicant is now fully cognizant of the seriousness of the situation and respectfully request the discretionary forgiveness provided by Congress. Counsel states that the only close family unit that remains in Mexico are the qualifying relatives' mothers (elderly 80 and 84 years old).

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Counsel states that family relocation would cause great economic loss the applicant's parents. Counsel states that the applicant has been a law-abiding member of the community and is pursuing a career in graphic design.

Section 212(a)(6)(B) of the Act in effect at the time of the applicant's exclusion hearing in January 1995 required an alien to remain abroad for one year or to obtain permission to reapply for admission before seeking reentry into the United States. The applicant failed to remain outside the United States for the required one-year period and returned in January 1995. The statute "plainly envisions that the alien has not returned to this country illegally" before reapplying for admission. See Estrada-Figeroa v. Nelson, 611 F. Supp. 576, 2 Immig. Rptr. A3-117 (S.D. Cal. 1985). Therefore, the applicant requires permission to reapply for admission on Form I-212.

Service instructions at O.I. 212.7 specify that a Form I-212 application will be adjudicated first when an alien requires both permission to reapply for admission and a waiver of grounds of inadmissibility. If the Form I-212 application is denied, then the Application for Waiver of Grounds of Inadmissibility (Form I-601) should be rejected, and the fee refunded.

The present record does not contain evidence that the applicant has remained outside the United States for one year since the date of deportation or removal as required by 8 C.F.R. 212.2(a), or that she was granted permission to reapply for admission to the United States.

Therefore, since there is no evidence that the Form I-212 application has been adjudicated first and approved in this instance, the appeal of the district director's decision denying the Form I-601 application will be rejected, and the record remanded so that the district director may adjudicate the Form I-212 application first, or provide evidence for the record that a decision has already been made on the Form I-212.

If the district director approves the Form I-212 application or provides evidence that such application has been approved, he shall certify the record of proceeding to the Associate Commissioner for review and consideration of the appeal regarding the Form I-601 application. However, if the district director denies the Form I-212 application or provides evidence that such application has been denied, he shall certify that decision to the Associate Commissioner for review, reject the Form I-601 application, and refund the fee.

ORDER: The appeal is rejected. The decision of the district director is withdrawn. The matter is remanded for further action consistent with the foregoing discussion.